

MINUTES
BOARD OF OSTEOPATHIC EXAMINATION
August 17, 2011

A regular meeting of the Tennessee Board of Osteopathic Examination was held at the Health Related Boards, 227 French Landing, Poplar Conference Room, Nashville, TN 37243.

Members Present: Jack G. Pettigrew, D.O.
 Paul G. Smith, Jr., D.O.
 Jill Robinson, D.O.
 Donald H. Polk, D.O.
 Karen R. Shepherd, D.O.

Member Absent: R. Fletcher Lance, Consumer Member

Staff Present: Rosemarie Otto, Executive Director
 Marsha Arnold, Unit Manager
 Andrea Huddleston, Advisory Attorney
 Kimberly Hodge, Administrator

The Board convened at 9:05 a.m. with Dr. Jill Robinson (President) presiding. Dr. Robinson determined that a quorum was present.

Minutes

Dr. Shepherd made a motion to approve the minutes from the May 11, 2011 Board Meeting. Dr. Smith seconded the motion. The motion carried. Dr. Shepherd made a motion to approve the minutes from the June 9, 2011 Board Meeting. Dr. Smith seconded the motion. The motion carried.

Agreed Order

Byron Harbolt, D.O. License No. 37 – Dr. Harbolt was not present but was represented by legal counsel, Mr. J. Mark Stewart. Shiva K. Bozarth represented the Tennessee Department of Health and presented the agreed order. Dr. Harbolt agreed that he dispensed controlled substances including phentermine from his office without maintaining adequate dispensing records required by the Drug Enforcement Agency. His actions violated Act, Tenn. Code Ann. 63-9-211(b)(13) for which disciplinary action by the Board is authorized. The Vanderbilt Comprehensive Assessment Program evaluated Dr. Harbolt and determined that he is fit to practice but should limit his practice to working no more than 24 hours per week and 4 hours a day. Mr. Stewart opined that Dr. Harbolt is a very vibrant, bright, intelligent individual who is well respected in the rural underserved community where he practices, but he has not kept up with the federal and state regulations for dispensing medication, an omission he is working to correct. After a discussion wherein board members expressed their admiration for the many years of service Dr. Harbolt has provided to his community, they discussed striking from the order any limitation on Dr. Harbolt's practice. After further discussion, the Board determined that Dr. Harbolt was still

an asset to the community so Dr. Polk made a motion to reject the agreed order and Dr. Shepherd seconded the motion. The motion carried.

Consent Order

Cody W. Davis, D.O. License No. 1734 – Dr. Davis was neither present nor represented by legal counsel. Mr. Anthony K. Czerniak represented the Tennessee Department of Health and presented the consent order. Dr. Davis agreed that he obtained prescriptions for medications from multiple providers for the same or similar drugs during very short periods of time, a practice commonly known as doctor shopping. On October 14, 2010, Dr. Davis's Tennessee license was suspended by the board based upon the following facts:

- a. On or about September 1, 2010, Dr. Davis was arrested for discharging a pistol in the direction of a hotel while under the influence of an intoxicant.
- b. On or about September 5, 2010, Dr. Davis was arrested for becoming disorderly after entering the Decatur County General Hospital while in an altered mental state. He became belligerent and began screaming and cursing.
- c. On or about September 6, 2010, Dr. Davis was arrested for recklessly endangering others with a rifle and threatening to harm himself. He was found in his hotel room with six firearms and a large quantity of ammunition. Dr. Davis had twenty-two bottles of medication in his possession at that time.
- d. Dr. Davis was deemed to be unsafe to practice medicine by his medical provider.

Additionally, on November 11, 2010, Dr. Davis was found guilty of two (2) counts of reckless endangerment (based upon the actions under (a) and (c)) in the General Sessions Court of Decatur County, Tennessee.

Based upon the finding of facts, Dr. Davis agrees that his actions constitute unprofessional, dishonorable or unethical conduct and personal misuse of drugs which is a violation of Tenn. Code. Ann 63-9-111 (b)(1) for which disciplinary action before the Board is authorized. Dr. Davis has agreed to have his license be suspended until he has completed any current treatment he is undergoing through his current medical provider and he agrees to obtain and maintain a contract for lifetime advocacy with the Tennessee Medical Foundation. Upon completion of the above, Dr. Davis must petition for an Order of Compliance and when granted, his license will be placed on (5) years probation. He is required to pay two (2) type "A" Civil Penalties in the amount of five hundred dollars (\$500.00) each, for a total of one thousand dollars (\$1,000.00). Dr. Davis is also required to maintain good and lawful conduct during his suspension as well as his probation and any violation of law will be a violation of the terms of the Order. He also agrees that this is a formal disciplinary action and will be reported to the Health Integrity and Protection Data Bank. Dr. Polk made a motion to approve the consent order with the understanding that Dr. Davis must petition for an order of compliance before the order could be lifted. Dr. Smith seconded the motion. The motion carried. Dr. Polk amended the motion to

require Dr. Davis to appear at the time the petition for an order of compliance is heard. Dr. Shepherd seconded the motion. The motion carried.

Applicant Interview

Vinodh T. Doss, DO – Dr. Doss appeared before the Board because Dr. Doss failed to disclose a 2009 DWI on his application. After a brief discussion, Dr. Polk made a motion to approve his application and Dr. Smith seconded the motion. The motion carried.

Annual Appearance

Fred C. Foshee, DO – Dr. Foshee has a general practice in Knoxville Tennessee. His license is currently on probation. He is required him to appear before the Board annually to report on his standing with the Tennessee Medical Foundation. Mr. Mike Todd of the Tennessee Medical Foundation was present and assured the Board that Dr. Foshee was progressing well and remains in full compliance with this TMF aftercare contract.

Manager's Report

Between May 1, 2011 and July 31, 2011 there were 32 new osteopathic physician applications received in the administrative office and 49 new licenses issued. Osteopathic physicians renewed online at a rate of 56%. The total number of active osteopathic licensees at the end of July was 959, active midwives 32, and osteopathic x-ray operators 18.

Financial Report

The direct expenditures for the Board as of June 30, 2011 were \$21,516.93. Revenues as of June 30, 2011 totaled \$225,019.32. Although the Boards 2011 indirect expenditures were not available, based on last years figures it appears the Board will be self-sufficient. There was a discussion about considering reducing the Board's renewal fee in the future so that the Board does not continue to accumulate a large surplus. The Board asked staff to prepare a spreadsheet to show how a reduction in renewal fees would impact the Board's overall finances.

Office of General Counsel

Andrea Huddleston reported that as of August 1, 2011 OGC had 27 open disciplinary cases pending against 15 osteopathic physicians.

Legislative Report

Ms. Huddleston reviewed the following new laws with the Board:

Public Chapter 310 relative to CSMD and release of database information. Authorizes law enforcement personnel to access the Controlled Substance Monitoring Database if they meet the following requirements: pre-register with the Board of Pharmacy by written application; receive pre-approval from their supervisor and the District Attorney General; and receive approval from

the Board to access the Database. Requires law enforcement agencies with access to the Database to remit an administrative fee in the amount consistent with the administrative fee remitted by pharmacies and medical prescribers. Removes the provision that allows the information contained in the Database to be subject to production pursuant to an order of a circuit or criminal court in a criminal investigation or pending prosecution. Adds that the information obtained from the Database by law enforcement is not a public record and could be shared with other law enforcement officers, but only upon the direction of the officer or agent who originally requested the information. Authorizes disclosure of information by a licensed practitioner or a pharmacist only to the patient to whom the information relates; other dispensers identified by the information; and law enforcement personnel, provided such personnel is engaged in the official investigation and enforcement of state and federal laws involving controlled substances or to ensure that the practitioners are meeting reporting requirements. Creates a Class D felony for intentional unauthorized use or disclosure of Database information by law enforcement personnel. *Signed by the Governor May 27, 2011.*

Public Chapter 340 regarding pain management clinics. Establishes regulation of pain management clinics. Department may discipline clinics by revocation or suspension of certificate and or imposition of civil penalties. Department of Health, in consultation with the Medical Board, BOE, BON, and PA Committee, to promulgate rules on or before October 1, 2011. *Signed by the Governor on June 16, 2011.*

Public Chapter 434 regarding provision of abortion services. Prohibits physicians from performing abortions or prescribing any drug or device intended to cause an abortion except in the presence of the pregnant woman and prohibits the administering or dispensing of such drugs or devices except in the presence of the pregnant woman's physician. *Signed by the Governor June 7, 2011.*

Proposed legislation which was not passed last session but may come up again in the next session:

House Joint Resolution 0340 re creating a special joint study committee to study the feasibility of establishing a system to make certain health-related boards and commissions more autonomous. The resolution creates a special joint committee to study the feasibility of making certain health related boards and committees administratively attached to the Department of Health more autonomous. *Filed April 27, 2011. Assigned to Finance Subcommittee of Finance, Ways & Means Committee on May 4, 2011.*

House Bill 2122/ Senate Bill 2071 regarding establishment of a statute of limitations for disciplinary actions before the Board and the Board of Medical Examiners. On April 25, 2011, the Board held a meeting with electronic participation in order to consider two proposed amendments to this bill. Those amendments were set to be considered by legislative committees or subcommittees very soon after the meeting. The Board voted to oppose the first amendment and to support the second amendment. Since the April 2011 meeting, the House bill has been deferred for summer study, and the Senate bill has been assigned to the general subcommittee of the General Welfare, Health, and Human Resources Committee.

Senate Joint Resolution 78 relative to establishing a special joint study committee to study the feasibility of establishing a system to make certain health-related boards and commissions more autonomous. Same as House Joint Resolution 0340 referenced above. *Referred to Senate Delayed Bills Committee in February. No further action.*

Office of Investigations

Juanita Stone informed the Board that there are 22 open complaints for osteopathic physicians in the Office of Investigations. Eighteen (18) are currently being investigated and 4 are ready for review. There are currently no complaints pending relative to osteopathic x-ray.

Disciplinary Coordinator

Juanita Stone reported to the Board that there are currently twelve (12) osteopathic physicians being monitored. Scott D. Lauer, DO, Beatrice Eugene, DO, and Robert J. Sass, DO will be removed from the monitoring report because they have complied with their respective Board orders.

Review and Ratification of Licenses

Dr. Smith made a motion to approve all new licensees. Dr. Shepherd seconded the motion. The motion carried. (See attached listing)

Dr. Polk made a motion to approve the re-instatement licensees. Dr. Shepherd seconded the motion. The motion carried. (See attached listing)

Designate Dr. Shepherd to Assist w/ Regulations regarding Pain Clinic Registration

Dr. Robinson appointed Dr. Shepherd to represent the BOE on the task force consulting with the Department of Health to write emergency rules to implement Public Chapter 340 requiring the registration of pain clinics. The Department of Health will have the emergency rules in place on or before October 1, 2011.

Designate Member to Help Develop a Protocol for Hormone Replacement Therapy

A committee comprised of members of the Board of Medical Examiners, Board of Nursing, Board of Osteopathic Examination and Committee on Physician Assistants have been directed by House Joint Resolution 104 to meet and study hormone replacement therapy and report back its findings to the General Assembly. The Board appointed Dr. Shepherd to represent the BOE.

Designate Member to Meet w/ BME & Dept. to Discuss Statute of Limitations Bill

The Board was informed that a Summer Study would take place the week of September 25th -30th to discuss House Bill 2122/Senate Bill 2071 relative to the establishment of a statute of limitations for disciplinary actions. The Board requested that administrative staff send an e-mail

with a specific date and time that the bill would be heard so an available member could try to participate on behalf of the Board.

Dr. Shepherd made a motion to adjourn. Dr. Smith seconded the motion. The motion carried.

These minutes were ratified by the Board November 2, 2011.